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STATE PASS COPYRIGHT FOR TEPP
STATE PASS USPTO FOR DUDAS, BROWNING, ANTHONY, THURWACHTER, COHEN,
WONG
STATE PASS USTR FOR ESPINEL, READE, MCCOY, WINTER, CELICO
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TAGS: [KIPR](#) [ECON](#) [ETRD](#) [WTRO](#) [CH](#)
SUBJECT: USTR's Second IPR Provincial Review to South China
Highlights Regional Differences

REFERENCE: A) Guangzhou 51; B) 06 Guangzhou 32379; C) 06 Guangzhou
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(U) This document is sensitive but unclassified. Please protect
accordingly.

11. (SBU) SUMMARY: A USTR-led delegation traveled to four cities in
Fujian and Guangdong provinces March 12-15 to engage local leaders
on IPR issues and raise specific areas of concern. Provincial and
municipal-level officials seemed engaged in IPR issues and often
said the right things, but their commitment to enforcement and
transparency varies significantly. Copyright enforcement -- in
CDs/DVDs, software, textbooks, and the internet -- is a priority for
provincial officials but also presents the biggest challenges. In
Xiamen, home of one of China's largest ports, Customs enforcement is
a top concern for the local government. In Putian, the center of
China's shoe manufacturing industry, local protectionism continues
to stand in the way of real enforcement. USTR urged local officials
to improve transparency, transfer more cases to the police, target
internet piracy, and assist foreign SMEs. The visits are part of
USTR's provincial review of China, announced in the Special 301
Report issued in April 2006, and follow a similar trip in August
12006. END SUMMARY.

Background on the Provincial Review

12. (SBU) In an effort to pinpoint the problems in China's IPR
enforcement system and develop more effective solutions, USTR has
focused on regional IPR enforcement. The 2006 Special 301 Report
names Guangdong as the center of large-scale counterfeiting in China
for goods ranging from low-cost consumer items to electronics. In
Fujian, the report highlights widespread production of counterfeit
athletic shoes, among other products. In August 2006, USTR led an
interagency delegation to Guangzhou, Dongguan, and Shenzhen in
Guangdong Province and Fuzhou in Fujian Province (ref C). USTR's
planned second trip to Guangdong and Fujian in December 2006 was
canceled at the last moment because provincial authorities, under
order from the central government, denied all of the meetings.

13. (SBU) This time the USTR-led delegation visited Xiamen, Putian,
and Fuzhou in Fujian Province and Guangzhou in Guangdong Province.
Chinese authorities approved the meetings only days before the trip

began and downgraded the official level of most of the meetings by two grades. The ranking official at the August 2006 meetings was the deputy secretary general; in this instance it was deputy division chief except in Guangdong, where the head of the provincial Intellectual Property Office chaired the first part of the meeting. Attending the meetings on the Chinese side were the Intellectual Property Office (IPO), Copyright Bureau, Culture Bureau, Administration of Industry and Commerce (AIC), and Foreign Affairs Office (FAO). In addition, a Customs official attended the Xiamen meeting, a Public Security Bureau (PSB) official attended the Putian and Fuzhou meetings, and a PSB and Technical Supervision Bureau (TSB) official attended the Guangdong meeting. On the U.S. side was Stanford McCoy, USTR's Chief Negotiator on IPR, Todd Thurwachter, an IPR Attache in Embassy Beijing, and Conrad Wong, USPTO Attorney Advisor and future IPR Attache in Consulate Guangzhou. Econoff and Econ Assistant accompanied.

Guangdong: Medicines, Internet, and Landlord Liability

14. (SBU) McCoy opened the meeting with Guangdong Province officials by highlighting some of the positive developments in Guangdong since his August 2006 visit: a successful campaign against stores selling fake drugs, including Lipitor and Viagra; AIC's apparent interest in using landlord liability laws to clean up local markets; the opening of IPR complaint service centers; and enforcement actions by Copyright to shut down websites that provide pirated textbooks. He also noted continuing areas of concern: 81 percent of counterfeit goods seized by U.S. Customs in 2006 originated in China -- with Shenzhen's Yantian and Shekou among the top five ports of lading; the mechanics of both administrative and criminal enforcement continue to lack transparency; increasing numbers of internet sites sell fake products; a need for enforcement actions at universities to coincide with the beginning of school terms; and infringers use

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express mail carriers to ship goods abroad.

15. (SBU) Guangdong PSB's Li Shanxiong stated that the PSB focused on important industries such as pharmaceuticals and textiles, and noted cooperation with U.S. companies such as Pfizer and Proctor & Gamble. (McCoy acknowledged that both companies had complimented these efforts.) Guangdong AIC's Wu Lichao did not elaborate on plans to use landlord liability laws to clean up markets, but said his agency will follow the precedent established in Beijing's Silk Street case. Copyright's Guo Xiuwen said her office is currently implementing a program which verifies that large-scale enterprises use legitimate software, and will target SMEs during the next phase. Through its actions, Copyright closed seven pirate music websites in 2005 and has convinced many popular websites to stop providing illegal music and software and many have established copyright protection divisions as a result. Illegal internet gaming sites will be the target of the next campaign. On textbook piracy, she referred to a past campaign in 2003. Culture's Chen Ang said Guangdong has China's largest volume of A/V products and noted that his agency has increased its staff from 400 to 1,300 to improve IPR enforcement. He cited close cooperation with MPA and IFPI and said local offices are encouraged to transfer cases to the PSB. McCoy encouraged Guangdong officials to target counterfeit CD/DVD manufacturers for criminal enforcement in the future. Culture stated that it was considering intensifying work on criminal transfers, which were already emphasized.

16. (SBU) IPO's Zhu Wanchang said Guangdong has eight municipal-level courts that accept IPR cases. IPR protection at trade fairs is a priority for his office. (According to David Buxbaum, head of AmCham-South China's IPR Committee, China's trade fair regulations do not state clearly how companies can pursue infringement cases outside of fairs -- an important avenue for rights holders.) TSB's Liang Lixin said the TSB Guangzhou special investigation office, which handles IPR cases, has gone from a staff of 30 to 130 in recent years. TSB has seen a double-digit increase in case transfers to the PSB, in part because local offices receive monetary awards of RMB 2 million (USD 260,000) for doing so. MORO's Zhou Lijun said Guangdong has established IPR complaint centers in Guangzhou, Shenzhen, Zhanjiang, and Shantou. Rights holders can also lodge IPR

complaints on MORO's website, which MORO is then required to refer to relevant agencies in a timely manner.

Fujian: Footwear and Copyright

¶17. (SBU) McCoy opened the meeting with Fujian Province officials by commending recent positive steps: a criminal case in Xiamen involving internet sales of infringing music and movies; a successful campaign against counterfeit medicines in Fuzhou and Xiamen; national-level regulations governing case transfers between Customs and PSB authorities; and the decision by central authorities to make permanent the 100 Day Campaign against pirated A/V products. He also noted continuing areas of concern in Fujian: Xiamen is among the top five ports of lading for counterfeit goods seized by U.S. Customs; Putian is a major source of counterfeit footwear; Xiamen PSB has shown a lack of initiative in investigating retail copyright criminal cases; and university campuses remain a center of textbook piracy. McCoy also encouraged Fujian officials to be sensitive to the complaints of small foreign companies. As an example, he noted that U.S. art printing companies have identified Fuzhou's Minhou County as home to a large number of infringing printers.

¶18. (SBU) IPO's Lin Jinyuan welcomed more data from the U.S. government regarding IPR infringement in Fujian. He said Fujian IPR agencies have improved interagency coordination and are transferring more cases to the PSB. He also touted Fujian's recently established IPR complaint centers and noted that the Fujian high court and six cities have IPR tribunals. A Copyright official said all municipal and county government offices now use legitimate software. Copyright verifies that computer manufacturers install legitimate software, and will inspect large enterprises this year to confirm they use legitimate software. He stated that enterprises that fail future inspections will be placed on a public blacklist, and end-user piracy cases will be transferred to criminal authorities if criminal thresholds are met. Copyright is also planning a special campaign against textbook infringement in 2007 to coincide with the

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beginnings of the spring and fall semesters. With respect to poster production in Minhou County, Copyright has not received complaints from right holders. PSB's Zhu Guichang said the Economic Crimes Investigative Division has a special team devoted to IPR crimes and has seen good cooperation with administrative bureaus. McCoy praised the provincial PSB for pushing local PSB offices to conduct raids, citing Nike's experience in Putian as an example. Fujian officials also stated that they send IPR officials to major Guangdong trade fairs, providing a possible avenue for right holder complaints.

Xiamen: Customs Enforcement

¶19. (SBU) Xiamen Customs has jurisdiction over approximately half of Fujian province, including the port cities of Quanzhou and Zhangzhou, and has a special division that handles IPR enforcement. According to Xiamen Customs' Zhang Wei, the International Customs Association presented awards to two Xiamen Customs officials in ¶2006. He said Xiamen Customs believed that transfer to criminal authorities was one of the most effective means of addressing copyright infringements, and that integration of civil, criminal, and administrative remedies was critical to fighting copyright infringements. Wei added that his office has worked closely with foreign rights-holders such as Nike, Microsoft, QBPC, and the International Olympic Committee. Though Xiamen Customs does not always have sufficient staffing, he said training is always provided. McCoy praised the close cooperation between U.S. companies and Customs officials and encouraged Xiamen Customs to fully exploit China's 2006 regulations on the transfer of cases from Customs to PSB. In response, Zhang said his office has already transferred cases, including one involving Nike. (Nike's Wei confirmed this and said it is an encouraging step. However, he commented that the time delay between seizure and investigation gives counterfeiters time to disappear.)

¶10. (SBU) McCoy also highlighted the importance of internet piracy enforcement, and noted a 2006 case in Xiamen's Huli district in

which two men who operated a website providing illegal music downloads were sentenced to prison. Xiamen Copyright's Wang Weihua said his office has a working group that deals exclusively with internet piracy and operates a telephone hotline for tips on internet piracy cases. Xiamen Copyright sends representatives to an annual summit of China's internet search engine companies, which has been held in Xiamen in recent years. Culture's Lei Longtong said his office transfers cases involving over 1,000 infringing CD/DVDs to the PSB. McCoy encouraged authorities to step up enforcement on university campuses, particularly during the beginning of semesters.

McCoy also noted that the local PSB had declined to pursue industry complaints against large-scale retailers of pirated optical media on grounds that such cases should be raised with Culture authorities.

Putian: Shoes and More Shoes, but Little Action

¶11. (SBU) McCoy opened the meeting with Putian officials by saying that almost half of U.S. Customs seizures of counterfeit products are of footwear, noting that Putian is a center of China's footwear industry. Putian IPO's Chen Kaiping cited a 2006 campaign against fake shoes and added that infringing factories in Putian are small-scale, rural "workshop" operations and thus difficult to track. He noted that local government had an interest in pursuing illegitimate enterprises because they did not follow labor laws. Putian's IPR enforcement officials have three areas of focus: verifying that OEMs produce legitimate brands, confirming that trademarks are legal, and monitoring import/export channels. PSB's Wu Jiangshan said the Mountain Eagle campaign remains a focus and his office publicizes big cases. When McCoy asked him to provide information on some of these cases to Consulate Guangzhou, he was noncommittal. He stated that local authorities received good cooperation from foreign right holders such as Nike, Adidas, and Puma. McCoy also raised a case involving Anheuser-Busch, in which an unlicensed bottler (Jinshi) is allegedly using Budweiser's Chinese name and visual elements confusingly similar to Anheuser-Busch trademarks on its labels. The officials promised to raise the issue with the Putian AIC, which was not present.

¶12. (SBU) Following the meeting, Nike representatives led the

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delegation on a tour of Putian and pointed out several large factories that had been the subject of local enforcement actions led by provincial officials, contradicting local officials' assertions that the problem was mainly in small workshops. A large factory with apparently modern facilities, Rino, is currently the defendant in a civil case brought by Nike in the Fujian High Court. In preparing for that case, Nike successfully requested two separate preliminary injunctions from the Fujian high court: one for search and seizure and the other for cease and desist. (AmCham-South China's Buxbaum commented to the delegation that court injunctions in IPR cases are extremely useful and foreign rights-holders do not use them enough.)

¶13. (SBU) The Nike reps pointed out other factories that produced fake Nike shoes in nighttime shifts, when authorities were least likely to inspect. They suspected Nike factory staff have cooperated with some of the infringers. Because Putian officials are notoriously corrupt, Nike always contacts provincial authorities first, who then typically work with Fuzhou City officials to conduct raids. (In 2005, a Putian PSB official allegedly asked the Nike reps for a RMB 100,000 payment (USD 13,000) for each infringer shut down.) Enforcement authorities still do not provide Nike with lists of seized goods after raids done in Putian. Nevertheless, they said administrative fines -- which typically range between RMB 200,000 and 500,000 (USD 26,000 and 65,000) -- have a deterrent effect on infringers.

Comment: Local Enforcement is a Mixed Bag

¶14. (SBU) Though government officials largely stuck to their talking points during the meetings, they also provided valuable insights into their priorities and recent actions. Guangdong and Fujian province officials are targeting copyright infringement and are

adding resources to relevant offices. Nevertheless, it seems unlikely that local officials have the training and initiative to tackle large-scale counterfeit rings, particularly those operating over the internet and in multiple jurisdictions. On the municipal level, Xiamen has a proactive Customs office and U.S. companies have told us they are cooperative. Nevertheless, street-level counterfeit markets, though not as prevalent as in Guangzhou, continue to exist: we visited a street of well-marked shops selling golf equipment that they readily admitted was counterfeit. Putian authorities, on the other hand, provided almost no useful information and seemed entirely uninterested in a future dialogue. Industry complaints of severe local protectionism in Putian seem to be justified.

¶15. (SBU) The meetings were also an excellent venue for us to state clearly for the Chinese side our areas of concern, building upon information gathered from industry and the August 2006 provincial review, and laying down markers for future interactions with key local governments. In these large meetings with numerous agency representatives, it is crucial to step in early to make these points -- before the Chinese side has a chance to launch into long, sometimes uninformative presentations. By clearly stating areas of concern early, as well as praising recent successes, the Chinese side was more likely to tailor their remarks to our interests.

¶16. (U) USTR has cleared this cable.

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